



POLICE DEPARTMENT

July 17, 2008

MEMORANDUM FOR: Police Commissioner

RE: Sergeant Timothy Beattie
Tax Registry No. 898935
Intelligence Division
Disciplinary Case No. 82593/07

The above-named member of the Department appeared before me on February 22, 2008, and March 19, 2008, charged with the following:

1. Said Sergeant Timothy Beattie, assigned to the Intelligence Division, on or about and between July, 2005 and November, 2005, upon receiving, or becoming aware of, an allegation of serious misconduct and/or misconduct against a federal, state or city employee, other than a member of this Department, did fail to report the facts to his Commanding Officer, and/or, the highest ranking supervisor in the command; to wit: said Sergeant failed to immediately report an act or acts of discrimination relating to Equal Employment Opportunity issues against a city employee known to this Department.

P.G. 207-22, Page 1- ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT

2. Said Sergeant Timothy Beattie, assigned to the Intelligence Division, on or about and between July, 2005 and November, 2005, upon observing conduct of a discriminatory nature, or becoming aware of an allegation or complaint of discrimination relating to Equal Employment Opportunity issues, did fail to immediately report the facts with regard to the discrimination to Office of Equal Employment Opportunity.

P.G. 205-36, Page 4, Paragraph 2 and 3 – EMPLOYMENT DISCRIMINATION

3. Said Sergeant Timothy Beattie, assigned to the Intelligence Division, on or about and between November, 2005 and April, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Sergeant did wrongfully and without just cause prevent or interfere with an official Department investigation in that the said Sergeant wrongfully and without just cause did not provide essential documentation and/or information to his supervisors with regard to

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an allegation of discrimination of which said Sergeant knew about and/or actually possessed.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

4. Said Sergeant Timothy Beattie, assigned to the Intelligence Division, on or about and between November, 2005 and April, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Sergeant did fail and neglect to conduct a proper investigation with regard to a complaint of discrimination relating to Equal Employment Opportunity issues, as directed by competent authority.

P.G. 203-10 Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Stephen Bonfa, Esq., Department Advocate's Office, and the Respondent was represented by Bruno Gioffre, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 2 and 3. It is recommended that Specification Nos. 1 and 4 be Dismissed.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that between July, 2005 and April, 2006, the Respondent was assigned to the Intelligence Division's (ID) Cyber Intelligence Unit (CU). His supervisors were Captain Steven D'Ulisse and Lieutenant Hector Berdecia. ID entered

into a contract with Orion Scientific Systems (OSS) under which OSS provided an intelligence and counterterrorism assistance program to ID that included software technology, data, technical support and intelligence. Dr. Bruce Tefft, OSS' intelligence liaison to ID, sent numerous daily e-mails to ID.

Ahmed Maky is a New York City Department of Correction (DOC) captain who was on loan to the New York-New Jersey High Intensity Drug Trafficking Area task force (HIDTA) from DOC. Because of his language skills, Maky was assigned to CU (which is housed under HIDTA) as a computer analyst and he was added to ID's list of individuals who received every e-mail that Tefft sent to ID. The Respondent was Maky's immediate supervisor.

The parties stipulated into evidence an e-mail that Tefft sent to ID on July 27, 2005 [Department's Exhibit (DX) 1] and that was received by everyone on ID's server list. This e-mail reads as follows:

Subject: Muslim Calendar anniversary of 9/11
Because of the difference between the Muslim lunar calendar and our Solar calendar, Muslim holidays each year fall on different dates on our calendar. This year the Muslim calendar anniversary of the 9/11 attacks (23rd of Jumada II on the Muslim calendar) coincides with Saturday, July 30th on our calendar. In past years, Islamists have been observed celebrating the 9/11 attacks on this date. Given the fact that this anniversary occurs on Saturday, July 30, it is also possible that Islamists might celebrate the day before during Friday prayers on July 29th. There are no other Muslim holidays that fall on these dates this year. While there is always a chance that Islamists will launch an attack to commemorate the 9/11 attacks, this date also offers an excellent intelligence collection opportunity. If you have any suspicions regarding the Islamist beliefs of individuals, Islamic Centers, Islamic Schools, Muslim organizations, businesses, etc., it would be useful to determine what activities these individuals/organizations participate in on July 29/30. If you observe groups participating in a party atmosphere in their best clothes next Friday or Saturday, it could possibly indicate the celebration of the deaths of 3,000 Americans on 9/11.

The parties also stipulated into evidence an e-mail that Maky addressed to the Respondent at his Department e-mail address and that was received by his server on

August 10, 2005 at 10:28 p.m. and was opened (DX2). (The Respondent did not stipulate that he had personally opened or read this e-mail). In this e-mail Maky wrote:

As I have stated to supervisors in the Intelligence Division in the past, many of these e-mails contain comments by Dr. Tefft that tend to distort reality and insult persons who adhere to the Muslims faith. The regular and consistent assertion by Dr. Tefft is that the threat to the US stems from Muslims, not from any specific terrorist organization. I am personally insulted and offended by this pattern, which implies that I am not to be trusted, and I am angered that my colleagues here in HIDTA are exposed to this constant anti-Muslim message. In one of today's e-mails, Dr. Tefft adds a comment: "Islamic leaders can't condemn Bin-Laden ...he is a good Muslim and have not violated any Islamic or Koranic tenets. Condemning another Muslim under those circumstances, is forbidden. Although, one can say anything one wishes to a non-Muslim and it doesn't count." This is just completely untrue. Aside from the fact the major Islamic organizations in the US have condemned terrorism, acts of violence against civilians, and bin-Laden himself, the misrepresentation of Koranic verses to assert that "one can say anything one wishes to a non-Muslim and it doesn't count" is just completely absurd and intolerable.

These two e-mails, and what was or was not done by the Respondent with regard to them, form the background for the Charges and Specifications in this case.

The Department's Case

The Department called Captain Steven D'Ulisse, Stuart Parker and Lieutenant Hector Berdecia as witnesses.

Captain Steven D'Ulisse

Captain D'Ulisse, who is presently assigned as the Intelligence Division's (ID) Special Collections Coordinator, recalled that in late November, 2005, when he was in charge of ID's Analytical and Cyber Intelligence Units, Sergeant Timothy Mehta told him that he had heard a rumor about a potential lawsuit involving the content of e-mail messages sent to ID by Tefft. Captain D'Ulisse testified that he then conferred with Stuart Parker, the unit's legal counsel, as to whether he should take any action regarding

e-mail messages that Tefft was continuing to send to those on the ID server list. Parker told Captain D'Ulisse to block out all future incoming e-mail messages sent by Tefft. Captain D'Ulisse directed Ken Middleton, who was in charge of the HIDTA computer center, to block out all future incoming e-mail messages sent by Tefft.

Captain D'Ulisse recalled that during that same month, November, 2005, he learned that the Respondent and Lieutenant Hector Berdecia had been tasked by Parker to review all of the e-mail messages sent by Tefft to ID to see if they could identify any e-mails sent by Tefft that could constitute the subject of the discrimination lawsuit that had been filed.

Captain D'Ulisse was copied by Parker and the Respondent on the e-mails they sent each other and their replies to these e-mails. Captain D'Ulisse identified an e-mail the Respondent sent to Parker on December 13, 2005, at 1:39 PM (DX 3). The Respondent wrote, "As per our conversation on November 29, there are NO e-mails archived in IDS nor has there ever been. Ken Middleton, on his own, has over 22,000 e-mails from Bruce Teft archived on his drive. Attached is the e-mail in question dated July 27. This is the exact way the e-mail came onto the HIDTA server: (The e-mail that Tefft sent to ID on July 27, 2005 (DX 1) cited above in the Introduction follows)."]

In replying to this e-mail on December 13, 2005, at 3:14 PM, Parker wrote:

According to Captain D'Ulise there was a compartment in IDS in which articles, newsletters and the like, including Tefft's newsletter was placed. That practice stopped at some point, but, as explained to me, the compartment remained. That's what I was asking about in the first item of my e-mail reprinted below. I don't believe you told me in our conversation on November 29 that such a compartment never existed. Is that what you are telling me now? Thank you for sending me the Tefft e-mail and satisfying my second request. I notice that the e-mail is from Tefft to Tefft. Does Tefft still have an e-mail address at HIDTA to which he sends his mailings? If not, when did that end? As of July 27, 2005 (the date of Tefft's mailing accompanying your e-mail) what happened to e-mails sent by Tefft to Tefft at HIDTA? The third and fourth requests remain open.

Parker also reiterated the document requests he had issued to the Respondent:

1. What newsletters, other materials are in the IDS compartment that the mass e-mailings of Tefft newsletter is in and for what period of time (from __200__ to 200__) are there materials in the compartment. (With this information, an informed decision can be made as to whether there is any value to the Division in not deleting all material from the compartment) 2. The Tefft mailing that set off the controversy. 3. The e-mail from someone on the operations desk (identity unknown to me) that sent the Tefft mailing to some or all members of the division (the e-mail would permit us to ascertain to whom the Tefft newsletter at issue was sent). 4. The e-mail correspondence that the sending of the Tefft newsletter triggered.

Captain D'Ulisse did not speak to the Respondent about his conversation with Parker. Captain D'Ulisse testified that he never told the Respondent not to worry about Maky's complaint. He further testified that the Respondent never told him that Maky had personally complained to the Respondent about the content of any e-mail message sent by Tefft. Captain D'Ulisse testified that he learned about the e-mail that Maky addressed to the Respondent at his Department e-mail address and that was received by the Respondent's server on August 10, 2005 at 10:28 p.m. (DX2) for the first time when he was shown this e-mail at his official Department interview in April, 2006.

On cross-examination, Captain D'Ulisse confirmed that Tefft would send ID 100 to 300 e-mails each day and that the Respondent was unable to obtain historical Tefft e-mails from ID's search engine because it was not working properly. Captain D'Ulisse testified that he was not aware that an individual named Alswabi had complained about e-mail messages sent by Tefft. When Captain D'Ulisse was asked whether the content of the July 27, 2005 e-mail message sent by Tefft (DX 1) rose to the level of a matter which should have been reported to OEE0, he answered, "Absolutely not." When Captain D'Ulisse was asked whether the content of the e-mail that Maky addressed to the Respondent at his Department e-mail address and that was received by his server on

August 10, 2005 (DX2), rose to the level of a matter which should have been reported to OEEO, he answered, "Yes." Captain D'Ulisse testified that he conducted EEO training during November, 2005, and that the Respondent had attended this training. Captain D'Ulisse confirmed that he was not disciplined or reinstructed regarding reporting discrimination complaints to OEEO.

Stuart Parker

Parker, who has been employed by the Department since April, 2003, is assigned to the office of the Deputy Commissioner for Legal Matters. He testified that since July, 2004, he has served as Special Legal Advisor to the Deputy Commissioner for Intelligence and works out of the HIDTA facility. During the last week of November, 2005, Captain D'Ulisse informed him that he had heard that a discrimination lawsuit had been commenced involving the content of e-mails sent to the ID server list by Tefft. The Respondent was assigned to perform document searches regarding e-mails sent to the ID server list by Tefft. Parker identified the e-mail the Respondent sent him on December 13, 2005, at 1:39 PM (DX 3) and his reply to this e-mail on December 13, 2005, at 3:14 PM.

Parker testified that the Respondent never provided him with the e-mail that Maky addressed to the Respondent at his Department e-mail address and that was received by the Respondent's server on August 10, 2005 (DX 2). He testified that the Respondent should have provided a copy of this e-mail to him because it constituted a document that was covered under the document search request that he had e-mailed to the Respondent.

He recalled that the first time he ever saw Maky's e-mail was when Department investigators showed him this e-mail in April, 2006. He testified that the Respondent never told him that Maky was personally offended by the content of any e-mail message sent by Tefft.

On cross-examination, Parker testified that he never personally ordered the Respondent to provide him with anything because he is a civilian member of the service and the Respondent is a uniformed officer. Parker testified that the Respondent was directed to comply with his document request by his uniformed supervisors. Parker acknowledged that the Respondent had informed him that Ken Middleton had, on his own, archived over 22,000 e-mails from Bruce Teft on his computer. Parker also acknowledged that the Respondent had provided him with the full text of the e-mail that Tefft sent on July 27, 2005 (DX 1).

Lieutenant Hector Berdecia

Lieutenant Berdecia, who is assigned to ID, testified that from October 31, 2005 until December 1, 2006, he oversaw the Cyber Unit. Based on Parker's request for historical Tefft e-mails housed in the computer main frame or database, Lieutenant Berdecia asked the Respondent to provide Parker with all historical e-mails. Lieutenant Berdecia was copied on the e-mails that Parker sent to the Respondent (DX 3).

Lieutenant Berdecia testified that the Respondent never informed him about any July, 2005 conversation with Maky and that the Respondent never provided him with the e-mail that Maky addressed to the Respondent at his Department e-mail address and that was received by the Respondent's server on August 10, 2005 (DX 2). The first time he

saw this e-mail was the day prior to his testimony at this trial when it was shown to him by the Assistant Department Advocate.

On cross-examination, Lieutenant Berdecia testified that his December 1, 2006 reassignment from the Cyber Unit had nothing to do with the lawsuit that Maky brought against the Department. Lieutenant Berdecia testified that his request to the Respondent that he provide Parker with the e-mails that Parker wanted was not an order and that this document procurement effort did not constitute an investigation.

On redirect-examination, Lieutenant Berdecia testified that even though he did not use the words "I order you" when he asked the Respondent to provide Parker with the e-mails that Parker wanted, the Respondent was required to comply with his request.

On re-cross-examination, Lieutenant Berdecia testified that the Respondent had informed him that Ken Middleton, the plant manager of the HIDTA facility, had told him that there was a problem retrieving some of the e-mails.

The Respondent's Case

The Respondent called Sergeants Christopher Green and Timothy Mehta as witnesses and testified on his own behalf.

Sergeant Christopher Green

Sergeant Green, assigned to the Internal Affairs Bureau (IAB), testified that on June 5, 2006, he was assigned to investigate an allegation that the Respondent had failed to notify anyone that Maky had complained that he had been discriminated against because he was offended by an e-mail that he had received. On September 14, 2006,

Sergeant Green conducted an official Department interview of the Respondent as the subject of the investigation.

He conducted a second official Department interview of the Respondent on January 26, 2007. Sergeant Green confirmed that the Respondent stated at this interview that he had spoken to Captain D'Ulisse and then Sergeant Timothy Mehta, in or around August, 2005, that Maky had been offended by a Tefft e-mail. Sergeant Green testified that he never interviewed Sergeant Mehta. Sergeant Green recalled that the Respondent stated at this interview that he was concerned about an e-mail that had been sent by a Probation Officer named Elaswaby.

Sergeant Green testified that when his investigation was completed, although the possibility of imposing informal discipline via a command discipline was discussed, it was ultimately determined that Charges and Specifications should be prepared and served on the Respondent.

On cross-examination, Sergeant Green testified that Deputy Inspector Edward Thompson determined that Charges and Specifications would be prepared regarding the Respondent and he signed the charges.

Sergeant Timothy Mehta

Sergeant Mehta, who is assigned to ID, testified that in July or August, 2005, he heard a rumor that a member of the Cyber Intelligence Unit "wanted to sue the Department over" a Tefft e-mail. He reported this rumor to Captain D'Ulisse and had several conversations with him about it. He also had a conversation with the Respondent

in which he told him that he had heard a rumor that Maky wanted to file a lawsuit against the Department. Sergeant Mehta testified that he was never interviewed by IAB.

On cross-examination, Sergeant Mehta testified that when he first reported this rumor to Captain D'Ulisse, he did not know the name of the member who allegedly wanted to file a lawsuit against the Department. It was not until his third or fourth conversation, which could have taken place in late August or early September, with Captain D'Ulisse that Sergeant Mehta reported that the rumor, which he had heard from Detective Azab, was that Maky was the person who wanted to sue the Department. He did not tell Captain D'Ulisse that he had heard this from Detective Azab.

The Respondent

The Respondent testified that he was out of the office when the e-mail that Tefft sent to ID on July 27, 2005 (DX 1) was received by everyone on ID's server list. When he returned to work on August 8, 2005, he saw that Probation Officer Elaswaby, who was a member of his unit, had stated in "chain" e-mails that he had been offended by what Tefft had written in his July 27, 2005 e-mail. The Respondent testified that he spoke to Captain D'Ulisse about this that same day and that Captain D'Ulisse not only told him that he was aware of Elaswaby's e-mails, Captain D'Ulisse also told him that Sergeant Mehta had reported that Maky "was going to file a lawsuit and possibly an EEO complaint." The Respondent then telephoned Sergeant Mehta who "confirmed that it was Maky." The Respondent then went back to Captain D'Ulisse who told him that he had conferred with Parker and that they need to start collecting historical e-mails.

The Respondent testified that he spoke to Ken Middleton, who had saved over 22,000 e-mails, and that he did his best to comply with Parker's document requests regarding Tefft's historical e-mails. He delivered Tefft's July 27, 2005 e-mail to Parker. Parker was adamant that the collection be performed without offending the people who were complaining about the e-mails. When Parker expressed frustration that he "could not come up with the things I am asking for," the Respondent explained to Parker that to obtain certain e-mails the request to the server had to come from a rank higher than a sergeant.

The Respondent testified that he never opened the e-mail that Maky sent to his server on August 10, 2005 at 10:28 p.m. (DX 2). Since he never read this e-mail, he was not aware of its contents until it was brought to his attention at his first official Department interview on September 14, 2006. Maky never told the Respondent that he felt that he was being discriminated against as a result of Tefft's e-mails.

On April 28, 2006, the Respondent was transferred from the Cyber Intelligence Unit to the Leads Investigation Unit in Brooklyn.

On cross-examination, the Respondent reasserted that he never personally opened or read the e-mail that Maky sent to his server on August 10, 2005 at 10:28 p.m. (DX 2). He conceded that someone had opened this email. He confirmed that he does not share e-mail with anyone else, that he has a unique account number and that he created his own password that must be used to access e-mails sent to his email account. He also confirmed that he worked his normal tour of duty on August 11, 2005.

The Respondent has filed a civil action against the City of New York because he believes that he was wrongfully transferred because he had done nothing wrong, and because this transfer amounted to a demotion in position.

The Respondent testified that Maky told him that he was "offended" by Tefft's July 25, 2005 e-mail (DX 1) but Maky never said he had been "discriminated against." The Respondent was confronted with the sworn Verified Complaint regarding his civil action that he signed on November 17, 2006 (DX 4). [In this Verified Complaint the Respondent stated that, "On or about July 25, 2005," he "received a discrimination complaint from one of his subordinates" and that "(t)his subordinate, Ahmed Maky, a corrections officer, alleged that he was being discriminated against because of his religion (Muslim) and National Origin (Egyptian);" that "(a)s Mr. Maky's supervisor," he "immediately took Mr. Maky's complaint to his direct supervisor, Captain D'Ulisse, to seek direction on what steps to take to halt the complained about discriminatory conduct;" that he "was informed by his supervisor, Captain D'Ulisse, that he would take care of the complained about discriminatory conduct;" that he "also had conversations with" Parker "regarding Mr. Maky's discriminatory complaints;" and that he "did everything in his power to protect Mr. Maky from any further discriminatory conduct and to oppose any further discriminatory conduct."

The Respondent testified that his attorney prepared this Verified Complaint, that it contains errors, and that it should be amended. The Respondent specifically noted that "on or about July 25, 2005" should be amended to read "August 10, 2005," and that since Maky never said that he had been discriminated against, Maky's name should be deleted from the sentence that reads: "Ahmed Maky, a corrections officer, alleged that he was

being discriminated against because of his religion (Muslim) and National Origin (Egyptian).”

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that the Respondent upon receiving, or becoming aware of, an allegation of serious misconduct and/or misconduct made by Maky against Tefft, “a federal, state or city employee, other than a member of this Department,” the Respondent failed to report the facts to his Commanding Officer and/or the highest ranking supervisor in the command, in that he failed to immediately report one or more discriminatory acts committed by Tefft against Maky, a city employee, which related to EEO issues.

This charge cites to and mirrors the language of Patrol Guide 207-22 which states that the purpose of this procedure is to “provide for notifications to the appropriate agency (emphasis added)” that employs the “federal, state or city employee” who is alleged to have engaged in misconduct. Thus, the plain language of Patrol Guide Procedure 207-22 establishes that this reporting requirement applies only when the subject of the misconduct allegation is a federal government employee, a state government employee or a non-Police Department employee of the City of New York or another city.

It is not disputed that at the time that Maky communicated his allegations against Tefft to the Respondent, Tefft was associated with Orion Scientific Systems (OSS), a non-government entity, and that the Tefft e-mails that Maky complained about were sent to Maky pursuant to a contract between OSS and this Department. The Assistant

Department Advocate (Advocate) argued that since Tefft's services were being paid for by this Department and since Tefft's e-mails were communicated to Maky by means of this Department's computer and e-mail systems, Tefft should be considered a city employee. I do not agree with the Advocate's position that a private contractor is converted into a city employee solely because the contractor was authorized to utilize Department communication systems.

Since Tefft was not a government employee as defined by Patrol Guide 207-22, the reporting requirements of Patrol Guide 207-22 were inapplicable with regard to Maky's allegations against Tefft.

Therefore, it is recommended that this charge be dismissed.

Specification No. 2

It is charged that upon observing conduct of a discriminatory nature or becoming aware of an allegation or complaint of discrimination made by Maky against Tefft relating to Equal Employment Opportunity issues, the Respondent failed to immediately report the facts with regard to the discrimination to Office of Equal Employment Opportunity (OEEO).

This charge cites to Patrol Guide 205-36 which states that "the Department prohibits the display in any form of offensive...ethnic, racial, religious, or other discriminatory material in or while using Department facilities or resources," and that "forms of display include" offensive material communicated "through a derogatory e-mail communication." As discussed below, Maky alleged to the Respondent that he

considered Tefft's e-mails, which Maky received via the Intelligence Division's cyber communications network, to be derogatory e-mail communications.

The supervisor reporting requirements of Patrol Guide 205-36 mandate that "any supervisor...who becomes aware of an allegation or complaint of discrimination... *must* notify the O.E.E.O., via telephone, or in person, by the next business day." In his Verified Complaint (DX 4), the Respondent acknowledged that he was Maky's "supervisor" and that he "received a discrimination complaint" from Maky who alleged that "he was being discriminated against because of his religion (Muslim) and National Origin (Egyptian)."

Thus, although in his testimony at this trial he asserted that Maky had only told him that he was "offended" by Tefft's e-mails, the Respondent acknowledged in a sworn legal document that he received a complaint of discrimination from a subordinate in his capacity as a Department supervisor. He failed to comply with the supervisor reporting requirements delineated in Patrol Guide 205-36 because he never notified OEEEO about Maky's complaint of discrimination via telephone or in person. I reject the Respondent's testimony that the reason he never made a notification to OEEEO was because Maky never raised a discrimination claim.¹ This testimony is contradicted by the statements he swore to in his Verified Complaint (DX 4).

The Respondent is found Guilty.

¹ Patrol Guide 205-36 states that a member should file a complaint with OEEEO if the member believes that "a manager, supervisor or any other *employee* (emphasis added) has engaged in" displaying offensive material. Although this language seems to indicate that members who have been subjected to a derogatory e-mail communication can only file an EEO complaint if the e-mail was sent or forwarded by another employee of the Department, the Respondent did not assert that his failure to comply with the supervisor reporting requirements of Patrol Guide 205-36 was based on this language.

Specification No. 3

The Respondent is charged with having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, on or about and between November, 2005 and April, 2006, by wrongfully and without just cause preventing or interfering with an official Department investigation in that he did not provide essential documentation and/or information to his supervisors with regard to an allegation of discrimination which he knew about and/or actually possessed.

Initially, I find that Parker was conducting an official Department investigation regarding an allegation of discrimination. I also find that the Respondent opened and was aware of the contents of the e-mail that Maky addressed to the Respondent at his Department email address and that was received by his server on August 10, 2005 at 10:28 p.m. (DX2). In this e-mail Maky wrote, "many of these e-mails contain comments by Dr. Tefft that tend to distort reality and insult persons who adhere to the Muslims faith" and that "I am personally insulted and offended by this pattern, which implies that I am not to be trusted, and I am angered that my colleagues here in HIDTA are exposed to this constant anti-Muslim message."

D'Ulisse, Parker and Berdecia all testified credibly that the Respondent never informed them about this e-mail and that they learned of the existence of this e-mail for the first time in April, 2006.

I reject the Respondent's unsupported, self-serving claims that he did not open Maky's August 10, 2005 e-mail (DX 2) and was, thus, unaware of Maky's discrimination claim regarding Tefft's e-mails. The Respondent's claim is refuted by his own testimony regarding the security of his e-mail account and by the factual statements he swore to in

his Verified Complaint (cited above under Specification No. 2). With regard to the security of his e-mail account, the Respondent conceded that this email was opened, that he does not share e-mail with anyone, that he has a unique account number, that he created his own password to access e-mails sent to his account, and that he was at his desk the day after the e-mail was received by his server.

The Respondent is found Guilty.

Specification No. 4

It is charged that between November, 2005 and April, 2006, the Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he failed to conduct a proper investigation with regard to a complaint of discrimination relating to Equal Employment Opportunity issues, as directed by competent authority.

It is recommended that this charge be dismissed for two reasons: First, because the Department's position that the Respondent was assigned to conduct an investigation with regard to a complaint of discrimination is inconsistent with the Department's theory of prosecution regarding Specification No. 3 and is not supported by the testimony of the Respondent's immediate supervisor; and, secondly, because the charge is redundant in that the subject matter of the charge is the same complaint of discrimination that is the subject of Specification No. 3.

The Department's theory of prosecution regarding Specification No. 3 was that it was Parker who was conducting an investigation with regard to a complaint of discrimination and that the Respondent prevented or interfered with Parker's

investigation by failing to provide essential documentation and/or information regarding an allegation of discrimination which he knew about and/or actually possessed, that is, the e-mail that the Respondent received from Maky on August 10, 2005 (DX2).

Moreover, the record shows that the Respondent was never directed to personally conduct an investigation into any complaint of discrimination. Rather, D'Ulisse, Parker and Berdecia all testified that the Respondent was only asked to perform a single, specific task: a document search to ascertain the existence of, and attempt to gather and provide Parker with, the e-mails that Tefft had sent to the ID server list. Most significantly, Lieutenant Berdecia, a Department witness who was the Respondent's immediate supervisor, specifically testified that because the Respondent was only assisting Parker, he was not conducting an investigation.

Finally, in his closing argument regarding Specification No. 4, the Advocate asserted that the Respondent had not conducted a "proper investigation" because he withheld the e-mail that he received from Maky on August 10, 2005 (DX2) and did not disclose the contents of this e-mail to D'Ulisse, Parker or Berdecia. As noted above, Specification No. 3 charges that the Respondent failed to provide essential documentation and/or information (by withholding Maky's August 10, 2005 e-mail) to his supervisors with regard to an allegation of discrimination which he knew about and/or actually possessed. Thus, this charge is redundant because the subject matter of this charge is that the Respondent withheld the same complaint of discrimination that is the subject of Specification No. 3.

Therefore, it is recommended that Specification No. 4 be dismissed.

PENALTY

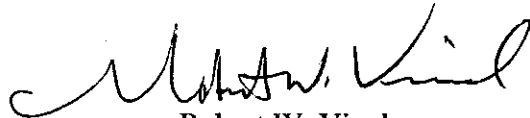
In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on April 30, 1991. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found guilty of having failed to immediately report to OEEA the facts regarding a discrimination complaint he had received. The Respondent has also been found guilty of having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by wrongfully and without just cause preventing or interfering with an official Department investigation in that he did not provide essential documentation and/or information to his supervisors with regard to an allegation of discrimination which he knew about and/or actually possessed.

In formulating a penalty recommendation, I have taken into consideration that the Respondent has no prior formal disciplinary record in 17 years of service.

It is recommended that the Respondent forfeit 20 vacation days.

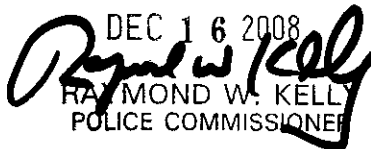
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED

DEC 16 2008

RAYMOND W. KELLY
POLICE COMMISSIONER